Teamsters Freight Local No. 480, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Hilton D. Wall. Case 26–CB–324

October 20, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

On November 25, 1966, Trial Examiner Harold X. Summers issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter the Respondent filed exceptions to the Decision and a supporting brief, and the General Counsel filed a cross-exception to the Trial Examiner's Decision and a supporting statement.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, as modified herein.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Teamsters Freight Local No. 480, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

1. Substitute the following paragraph 1(a) for the present paragraph:

"(a) Entering into, maintaining, or giving effect to any oral agreement or understanding with Potter Freight Lines, Inc., which discriminates against any employee with respect to seniority with Potter Freight Lines, Inc., on the basis of his prior lack of membership in or representation by a labor organization."

2. Substitute the following paragraph 1(b) for the present paragraph:

"(b) Causing or attempting to cause Potter Freight Lines, Inc., to deprive Hilton D. Wall of seniority rights based upon his last employment prior to that with Potter."

3. Add the following as paragraph 1(c):

"(c) In any like manner restraining or coercing employees of Potter in the exercise of their right to self-organization to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities."

4. Amend the Trial Examiner's notice to employees by deleting the first indented paragraph and substituting the following:

> WE WILL NOT enter into, maintain, or give effect to any oral agreement or understanding with Potter Freight Lines, Inc., which discriminates against the seniority of any employee of Potter Freight Lines, Inc., because of his prior lack of membership in or representation by a labor organization.
>
> WE WILL NOT cause or attempt to cause Potter Freight Lines, Inc., to deprive Hilton D. Wall of seniority rights based upon his last employment prior to that with Potter.

[1] We agree with the Trial Examiner that the Respondent violated Sec. 8(b)(1)(A). In addition, we find as alleged in the complaint that the Respondent violated Sec 8(b)(2) by entering into an oral agreement with Potter Freight Lines, Inc., that Hilton D. Wall would be placed at the bottom of the employees' seniority list at its Nashville terminal because employees of Cookeville Motor Lines had not been represented by a labor organization. By entering into such agreement, Respondent caused or attempted to cause Potter Freight Lines, Inc., to discriminate in regard to terms and conditions of Wall's employment in violation of Sec. 8(a)(3) of the Act.

TRIAL EXAMINER'S DECISION

HAROLD X. SUMMERS, Trial Examiner: This case was heard upon the complaint[1] of the General Counsel of the National Labor Relations Board (herein called the Board), alleging that Teamsters Freight Local No. 480, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called Respondent or Local 480), had engaged in and was engaging in unfair labor practices within the meaning of Section 8(b)(2) of the National Labor Relations Act (herein called the Act). Respondent's answer to the complaint, as amended at the hearing, admitted some of its allegations and denied others; in effect, it denied the commission of any unfair labor practices. Pursuant to notice, a hearing was held before me at Nashville, Tennessee, on August 18, 1966; all parties were afforded full opportunity to appear and to examine and cross-examine witnesses, and thereafter to submit briefs.

Upon the entire record in the case, including my evaluation of the reliability of the witnesses based upon the evidence and my observation of their demeanor, I make the following:

[1] The complaint was issued June 24, 1966. The charge initiating the proceeding was filed May 5, 1966.

FINDINGS OF FACT

I COMMERCE

Potter Freight Lines, Inc. (herein called Potter), is and at all material times has been a Tennessee corporation engaged as a common carrier of freight by motor vehicle; its principal office and place of business is located at Nashville, Tennessee, and it operates freight terminals in Nashville and in several other cities in Tennessee. During the 12 months preceding the issuance of the instant complaint, Potter derived gross revenues in excess of $50,000 each for services performed in the transport of freight destined for delivery from points in the State of Tennessee to points outside Tennessee and in the transport of freight within the State of Tennessee which originated at points outside Tennessee.

Potter is an employer engaged in commerce within the meaning of the Act.

II. THE UNION

Local 480 is and at all times material has been a labor organization within the meaning of the Act.

III THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issue*

The sole issue here is whether Local 480 unlawfully caused Potter to place the Charging Party, Hilton D. Wall, at the bottom of its employees' seniority list.

B. *The Setting and Chronology of Events*

For about 12 years prior to January 1, 1966, Potter had been dealing with a local union (herein called Local 327) of the same International union with which Local 480 is affiliated The working conditions of Potter's employees, at that time, were covered by a collective-bargaining agreement[2] which was not due to expire, by its terms, until March 31, 1967 This agreement contained the following pertinent provisions with respect to seniority:

> Article 5, Section 1: Seniority rights for employees shall prevail under this agreement and all agreements supplemental hereto. . . .
>
> * * * * *
>
> Section 3: (a) In the event the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by mutual consent between the Employer and the Union involved.
>
> In the application of this provision the following general rules shall apply:
>
> Merger, purchase, acquisition, sale, etc.
>
> (1) If both carriers involved are solvent then the seniority lists of the two Companies should be dovetailed so as to create a Master Seniority list based upon total years of service with either Company. . . .
>
> (2) If . . . one of the Companies is insolvent at the time of the transaction, then the employees of the insolvent Company will go to the bottom of the master seniority list. . . .
>
> In the application of this rule, it is immaterial whether the transaction is called a merger, purchase, acquisition, sale, etc. It is . . . immaterial whether separate terminals of the Companies are physically merged or not. . . .
>
> (3) If the transaction involved merely a purchase of permits or rights by one carrier from another carrier without the purchase or acquisition of equipment, terminals, or business, the employees of the Company selling the permits shall have no seniority rights at all, but shall be offered opportunity for employment at the bottom of the Company purchasing the permits. If such employees are hired, they shall be given seniority credit for fringe benefits only. . . .
>
> Article 39, Section 1: Seniority rights shall prevail.
>
> Section 2: A list of the employees in the order of their seniority shall be posted at their place of employment. Controversies regarding seniority shall be settled [through a specified grievance procedure setting forth a number of steps: (1) Negotiations between the involved union and employer; (2) failing settlement there, submission to a "Multi-State Committee" or its equivalent, (3) no majority decision having been reached by that Committee, submission to the "Area Grievance to an umpire if a majority of the Area Grievance Committee so decides]. . . .

Under the contract in question, I find that substantial employment rights were at least in part dependent upon an employee's place on his seniority list.

Beginning early in 1965, there were discussions between representatives of Potter and of another freight carrier concerning the possible consolidation of their operations. The other carrier, known as Cookeville Motor Lines (hereinafter called Cookeville Motor), was owned by W. C. Keyt and Charles Hershaiser, copartners. By the agreement which was finally consummated, to be effective January 1, 1966, (1) Potter would take over Cookeville Motor's assets and liabilities; (2) shares of Potter's capital stock, augmented by newly issued shares, would be divided equally among four individuals, including Keyt and Hershaiser; and (3) thereupon, these two would become officers of Potter actively engaged in its management. Also (4) Cookeville Motor's sole terminals, located at Nashville and at Cookeville, Tennessee, would be closed down and (5) Cookeville Motor's employees at those terminals would be taken into the employment of the surviving enterprise at Potter's Nashville and Cookeville terminals, respectively.

(At the instant hearing, this transaction was more often than not referred to by one or another of counsel and witnesses as a "merger." The parties stipulated, however, that it constituted a "sale and purchase." Although I shall adopt this agreement of the parties as controlling my *terminology* herein, my findings and conclusions would be the same, regardless of the nature of the transaction.)

Cookeville Motor's employees were not represented by any labor organization.

On two or more occasions during the latter stages of the negotiations between the two companies, Wayman Hill, president of Potter, had discussed the impending

[2] The agreement was a National Master Freight Agreement, as supplemented by the Southern Conference Area Agreement covering the geographical area which included Potter's operations, Potter and Local 327 were signatories

move with Don Vestal, then president of Local 327, bargaining agent of Potter's employees He explained that the move was designed to streamline operations and would not put anyone out of work; on the contrary, he said, all Potter employees would be retained and the Cookeville Motor employees would be taken over by Potter. (In answer to a specific query, he said that Cookeville had but one man working in Nashville, a "good" man who was "needed" by Potter.) It was agreed between the two—orally, so far as this record reveals – that the Cookeville Motor employees who came over to Potter would go to the bottom of the seniority lists of the respective terminals involved.

On or about December 18, 1965, the employees of both Potter and Cookeville Motor were invited to a dinner meeting by the management of both companies. The occasion was designed to serve a double purpose—as an employees' Christmas dinner and as an opportunity to give details of the coming consolidation. Hill, the main speaker, gave details of the "merger." Among other things, he said that none of the Cookeville Motor employees would be out of work; he said that they would become a part of the Potter workforce—at the bottom of the list there.

After the meeting ended, Hill and Keyt (one of Cookeville Motor's partners) had coffee with Hilton Wall, Cookeville Motor's sole employee at Nashville. (Wall, a dockman and general driver hired in July 1964, spent about 25 percent of his time working in the terminal office.) The keynote of the meeting was the enthusiasm of the three over the impending move. Wall, for example, was of the opinion that he would make more money. The seniority list entered into the conversation only to the extent that Hill said that being at the bottom of Potter's seniority was "as good as" being at the top, because Potter never laid off employees.

On January 1, 1966, the terms of the sale-and-purchase agreement outlined above, went into effect.

Meanwhile, during the latter part of 1965, Local 327 had been undergoing a reorganization. A new local, the Respondent herein, had been chartered and was in progress of being installed; eventually, it was contemplated, Local 480's jurisdiction would cover all freight operations in the area concerned and Local 327 would cover what are known as industrial or miscellaneous operations There is some lack of certainty as to the exact dates of the formal commencement of activities by Local 480, but, for the purposes of this proceeding, based upon stipulations, concessions, and evidence in the record, I find that (1) Local 480 succeeded Local 327 as exclusive bargaining agent of Potter's employees on and after January 1, 1966; (2) the collective-bargaining agreement above referred to remained in effect with respect to Potter's employees after January 1, 1966, except that Local 480 succeeded Local 327 as the union signatory representing these employees; and (3) with respect to certain acts hereinbelow found to have been performed by individuals who may nominally have been agents of Local 327 rather than of Local 480, such individuals were acting on behalf of, and responsibility for such acts is attributable to, Local 480 – specifically, that, in their conduct described hereinbelow, Luther Watson, Leon Medlin, and Charles Fisher, were acting as agents of Local 480.

On January 3, 1966, pursuant to instructions given him, Hilton Wall reported for his first day of work at Potter's Nashville terminal On the same day, a seniority list of Potter's Nashville terminal employees was posted, which list did not contain Wall's name. The explanation is obvious: this was a list of that terminal's employees as of the end of 1965—before the addition of any Cookeville Motor employees.

Subsequently, however—on or about January 26—a new seniority list was posted at the Nashville terminal. Now, Wall's name did appear, the last of 16 names listed. After each of the other names a date was inserted, which date, I find, was the original date of hiring by Potter. Next to Wall's name was the notation "1–3–66 (COMPANY SENIORITY 7–6–64)."

On or about February 15, Wall, in the presence of at least five other employees, filed a grievance over the "deprivation" of his seniority. (Had he been "dovetailed" on the seniority list to allow credit for time spent in Cookeville Motor's employ, he would have been 14th instead of 16th on the list.) Local 480's Business Agent Luther Watson, with whom he filed the grievance, asked him if he had any "contract rights" at Cookeville Motor. Receiving a (negative) answer, Watson said, in effect, that the grievance would be processed but that "it would do Wall no good" because the Supreme Court had ruled that "when a union company takes over a nonunion company, the nonunion company's employees go to the bottom of the list." Wall asked when the ruling was laid down, but Watson was unable to give details; and to Wall's assertion that he would take his own case to the Supreme Court, Watson said that was his privilege – if he could afford it.

Wall had filed the grievance in the hope that Potter and Local 480 representatives would "get together" to adjust his seniority situation. (In fact, there is some reason to believe, on this record, that on the earlier occasion of a complaint by Wall to Keyt – formerly a Cookeville Motor partner but now vice president and general manager of Potter – the latter suggested that the filing of a grievance might lead to such a meeting.) Now, within days after he filed the grievance, he specifically asked Charles Fisher, another of Local 480's business agents, to get together with him and Keyt to discuss the matter, but Fisher declined to meet, saying that it was now in the hands of the grievance committee. Notwithstanding this, Keyt, in a conversation held at or about that time with Fisher, did raise the subject; he volunteered to testify with respect to Wall's grievance, and he said that Potter would abide by the decision of the grievance committee.

The grievance quickly went to the second step of the machinery – submission to the Multi-State Grievance Committee.[3] Local 480 did not actively argue for Wall's position. Quite the contrary. In view of the fact that (it concedes) its own position was contrary to that of the grievant, I find that its representatives actively opposed the action sought.[4] The most that can be said is that Local 480 "processed" the grievance.

The Multi-State Conference denied the grievance.

On May 5, 1966, Wall filed the instant charge, along with one[5] against Potter. With respect to the latter proceeding, Potter entered into a settlement agreement whereunder it agreed not to enforce any decision of Local 480 with respect to Wall's seniority status which was predicated on the union status of employees while work-

[3] This record is bare as to the composition of the committee

[4] For example, Local 480 submitted two letters in opposition to the action sought by the grievance, signed by the two employees who would be disadvantaged thereby

[5] Case 26–CA–2410

ing for Cookeville Motor and to treat Wall, for seniority purposes, on the basis of the date he was hired at Cookeville Motor. Local 480—not a party to that agreement – has indicated it would take "necessary steps" to prevent or to protest any implementation of these undertakings.

C. *Conclusions*

It is well settled[6] that it is not unlawful *per se* for a union to cause an employer adversely to affect the status of an employee; that the lawfulness of such action depends upon the motivation of the union; that such motivation, to render the conduct violative of the Act, must relate to the encouragement (or discouragement) of union membership, union adherence, or union "regularity"; and, finally, that unlawful motivation may be inferred from the arbitrariness, invidiousness, or irrelevance of the conduct in question.

The General Counsel argues, in this matter, that Local 480 caused Potter to place Wall at the bottom of a seniority list rather than in the position to which his employment by Cookeville Motor would have entitled him because he was not represented by a labor organization at Cookeville Motor. Local 480, on the other hand, urges that unionism played no part in the action—that Wall was given no seniority rights based on his pre-Potter employment because, until he came to Potter, he possessed no seniority rights.

The parties introduced evidence on the question of whether, in fact, Wall did have any "seniority rights" at Cookeville Motor. To the extent it had relevance, I find that Cookeville Motor's employees did not enjoy seniority rights within the meaning of the term as usually employed in the area of employee relations. In arriving at this conclusion, I rely on credited testimony to the effect that, while, under ordinary circumstances, Cookeville Motor would give weight to an employee's seniority in making personnel decisions, its agents could, and would if they wished, ignore the factor for any or no reason. Seniority was not a term or condition of work at Cookeville Motor.[7]

But, in my opinion, this is not dispositive of the matter. The question is not what seniority rights the Cookeville Motor employees brought with them from that organization, but what rights they were to start with at Potter. Pursuant to agreement between Local 480 and Potter, they started with none; yet, by counsel's own statement, had they possessed seniority rights under a *collective-bargaining contract,* those rights would have been honored. Clearly – since the existence of a collective-bargaining contract connotes representation by a labor organization—the deprivation of seniority at Potter coincides with, if it does not flow from, the absence of union representation at Cookeville Motor.

It is, of course, possible that, even if a union *had* represented Cookeville Motor employees, the collective bargaining there might have resulted in *no* seniority rights. In such case (accepting the position taken by Respondent here), the employees would have been accorded no prehire seniority rights at Potter; and, in such case, obviously, the failure to give seniority rights would not have been attributable to prior nonunion status. So the question still remains—Was Local 480's conduct here based upon the (Cookeville Motor employees') absence of seniority rights or absence of union representation?

If there were no additional factors shedding light upon the answer to this question here—i.e., if we merely had the seniority clauses quoted above, only giving weight, as they do, to prior seniority *rights,* plus a strict enforcement of the clause—the General Counsel would not have sustained his burden.[8] (Indeed, it should be noted, the General Counsel does not attack the validity of the clauses; rather, he accuses Local 480 of discriminatorily applying them.) And so we must examine illuminative evidence, if there is any.

I have found, *supra,* that Luther Watson, agent of Local 480, told Wall, in the presence of other employees of Potter, that it would be futile for him to grieve over his "lost" seniority since, the Supreme Court had ruled, when a union company takes over a nonunion company the nonunion employees go to the bottom of the list. His reference, presumably,[9] was to a year-old decision of the Court of Appeals for the First Circuit in the *Whiting Milk* case,[10] the tenor of which might well lead one to conclude that, as between union and nonunion employees affected by a merger, seniority based on past experience could lawfully be given the first group and denied the second. The actual situation there prevailing, and the precedential applicability of that ruling to the instant case, will be alluded to hereinbelow; suffice it to say at this time that (I find) Local 480's position was that expressed by Watson on February 15.

Statements of counsel served further to explain Local 480's motivation: Local 480's position, in these matters, is that existing seniority rights created by contract to which a Teamsters local was signatory would be honored by being dovetailed; seniority rights created by the collective-bargaining agreements of other labor organizations would be "a matter of negotiations," whereas seniority resulting from other than collective-bargaining contracts and general seniority standing undignified by contract would carry no weight whatsoever.[11]

On this record, I am convinced that Local 480's conduct herein was based not on the existence or nonex-

[6] For amplification, see discussion in *Chicago Federation of Musicians, Local 10 (Shield Radio),* 153 NLRB 68, 81–84.

[7] See *Trailmobile Company* v *Whirls,* 331 U S 40, fn 21, and authorities cited

[8] *Local 357, Teamsters [Los Angeles-Seattle Motor Express] v N L R B ,* 365 U S 667, 675–676

> When a union engages in collective bargaining and obtains increased wages and improved working conditions, its prestige doubtless rises and, one may assume, more workers are drawn to it. . . The truth is that the union is a service agency that probably encourages membership whenever it does its job well But, as we said in *Radio Officers* v *Labor Board* [347 U S 17, 43] the only encouragement or discouragement of union membership banned by the Act is that which is "accomplished by discrimination."
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> * * * * *
>
> We cannot assume that a union conducts its operations in violation of law

[9] The General Counsel, in his brief, suggests that the reference was to *Humphrey* v *Moore,* 375 U S 335, and that Watson, in his remark, was erroneously oversimplifying the issue there. In point of fact, that case bears no resemblance to the situation postulated by Watson, there, the Court ruled that the union, in the part it played in dovetailing the seniority of two groups of union-represented employees, had acted upon wholly relevant, and not capricious or arbitrary, considerations

[10] *N.L R B.* v *Whiting Milk Corp.,* 342 F 2d 8

[11] Thus, in effect, *three* classes of employees have been created in the matter of considering past service with a purchased or merged company Teamster-represented employees, other union-represented employees, and unrepresented employees.

istence of formal seniority rights but on the existence or nonexistence of prior representation by (1) locals of the International with which Local 480 was affiliated, or (2) any other labor organization.

The precedent most directly in point is the Board's Decision in *Whiting Milk Corporation (Milk Wagon Drivers, Local 830)*, 145 NLRB 1035. There, the applicable collective-bargaining contract contained a provision that, in the event of a merger with or acquisition of "another Union Company, the seniority and category service of those affected by such action shall [with certain specified limitations] be deemed to have been established with the entity produced by such merger or acquisition." Whiting Milk took over White Brothers' five plants, the employees of four of which had been represented by the same union representing Whiting's employees, and, pursuant to the seniority provision above cited, seniority based on experience with White was accorded to employees from the four union-represented plants and denied those from the fifth. The Board, affirming the Trial Examiner, found both the seniority clause and its application to be violative of the Act. I believe that the instant situation is governed by that Decision.[12]

Upon the entire record and on what I am convinced is a fair preponderance of the credible evidence, I conclude and find that Local 480, in entering into an agreement with Potter to place Wall at the bottom of Potter's Nashville terminal seniority list, was motivated by the fact that Wall, theretofore, had not been represented by a union; and that, therefore, it restrained and coerced employees in the exercise of their right not to be represented by a labor organization in violation of Section 8(b)(1)(A) of the Act.[13]

Upon the foregoing factual findings and conclusions, I come to the following:

CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
2. Potter is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. By causing Potter to place Hilton D. Wall at the bottom of the employees' seniority list at Potter's Nashville, Tennessee, terminal, Respondent restrained and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8(b)(1)(A).
4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, I issue the following:

RECOMMENDED ORDER

Teamsters Freight Local No. 480, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing Potter Freight Lines, Inc., to deprive Hilton D. Wall of seniority rights based upon his last employment prior to that with Potter.

(b) In any like manner restraining or coercing employees of Potter in the exercise of their right to self-organization to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which I find will effectuate the purposes of the Act:

(a) Notify Potter and Wall, in writing, that it has no objection to Wall's being accorded seniority rights based upon his last employment prior to that with Potter.

(b) Post at conspicuous places at its office in Nashville, Tennessee, where notices to members and/or registrants for employment are customarily posted, copies of the attached notice marked "Appendix."[14] Copies of such notice, to be furnished by the Regional Director for Region 26, after being duly signed by an authorized representative of Local 480, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(c) Sign and mail copies of said notice to the Regional Director for Region 26, for transmission to and for posting by Potter, if willing, at places where notices to employees are customarily posted.

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[12] In *N L R B v Whiting Milk Corp*, noted *supra*, the Court of Appeals for the First Circuit set aside the Board's Order The court reasoned that, no seniority rights having vested in White's nonunion employees, they possessed no seniority prior to their takeover by Whiting, having brought nothing to their new jobs, they were deprived of nothing It seems to me that the answer to this rationale – as explicated in the dissenting opinion in the *Whiting* case – is that the real question is not what one has brought to a new job, but what one is given (or not given) to start the new job with, and the motivation behind, or natural result of, the giving (or withholding) At any rate, I am constrained to follow Board precedents in my disposition of cases (Also see *IAM, Lodges 727 and 758 (Menasco Manufacturing Co)*, 123 NLRB 627, enfd in relevant respects 279 F 2d 761 (C.A 9), cert denied 364 U S 890, but cf *Central States Petroleum Union, Local 115 (Standard Oil Co)*, 127 NLRB 223)

[13] In view of my express finding that Local 480 was motivated by union considerations in its conduct, it perhaps is unnecessary to deal with the General Counsel's implicit argument that, at any rate, Local 480, by failing to accord equal treatment among its constituents, was not fairly representing them (See *Miranda Fuel Company*, 140 NLRB 181, enforcement denied 326 F 2d 172 (C A 2), *Independent Metal Workers Union, Local No 1 (Hughes Tool Co)*, 147 NLRB 1573) But let me say here, against the possibility of a remand, that, if Local 480 were discriminating only on the basis of "vested" versus "nonvested" rights, I would not regard the discrimination as being based on arbitrary, invidious, or irrelevant considerations

[14] In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order "

(d) Notify the Regional Director for Region 26, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.[15]

[15] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 26, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF TEAMSTERS FREIGHT LOCAL NO. 480, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AND TO EMPLOYEES OF POTTER FREIGHT LINES, INC.

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT deprive new employees of seniority status merely because they have not been represented by a union in the past.

WE WILL NOT in any like manner restrain or coerce employees of Potter Freight Lines, Inc., in the exercise of their rights to organize; to form, join, or assist a labor organization; to bargain collectively through a bargaining agent chosen by themselves; to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection; or to refrain from any such activities (except to the extent that the right to refrain is limited by the lawful enforcement of a lawful union-security requirement).

WE have notified Potter Freight that we have no objection to according seniority rights to Hilton D. Wall based upon his last employment prior to that with Potter Freight.

TEAMSTERS FREIGHT LOCAL NO. 480, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(Labor Organization)

Dated By
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If members and employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 746 Federal Office Building, 167 North Main Street, Memphis, Tennessee 38103, Telephone 534–3161.